

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
VERMONT TRANSCO LLC)	File No. 0003890518
)	WT Docket No. 11-26
Request for Waiver of Certain Part 80 Automated)	
Maritime Telecommunications System Rules)	

ORDER

Adopted: June 22, 2011**Released: June 23, 2011**

By the Deputy Chief, Mobility Division, Wireless Telecommunications Commission:

1. *Introduction.* On July 2, 2009, Vermont Transco LLC (Transco) requested waiver of certain Part 80 rules to allow it to operate a private land mobile radio (PLMR) system on Automated Maritime Telecommunications System (AMTS) spectrum to provide communication services for Transco's electric distribution operations.¹ On January 21, 2011, Transco supplemented its request to clarify the scope of the requested waiver.² As set forth below, we grant the waiver request in part and deny it in part.³

2. *Background.* The AMTS service originally was intended to authorize specialized systems of coast stations providing integrated and interconnected marine voice and data communications.⁴ In 1997, the Commission amended its rules to permit AMTS licensees to provide commercial service to fixed and mobile units on land, under certain conditions.⁵ In 2002, the Commission adopted a geographic area licensing approach for AMTS stations.⁶ In 2007, the Commission amended its rules to permit AMTS licensees to provide private mobile radio service, as well as commercial service, to units on land.⁷

3. Transco owns Vermont's high-voltage electric transmission system, and provides service throughout Vermont and elsewhere in New England. Its communications system will be used to satisfy both fixed and mobile communications requirements, and will provide data and voice service. Among other features, the system will provide increased functionality with respect to monitoring equipment

¹ FCC File No. 0003890518, Request for Rule Waiver (filed July 2, 2009) (Request).

² Supplement to Request for Waiver (filed Jan. 21, 2011) (Supplement).

³ The waiver request went on public notice on February 17, 2011. See Wireless Telecommunications Bureau Seeks Comment on Vermont Transco LLC Request for Waiver of Certain Part 80 Automated Maritime Telecommunications System (AMTS) Rules, *Public Notice*, 26 FCC Rcd 1912 (WTB MD 2011). Commenters Maritime Communications/Land Mobile, LLC and Skybridge Spectrum Foundation (and related parties) support the request. In addition, the commenters criticize each other with respect to matters that are beyond the scope of this proceeding. We will not address those issues herein.

⁴ See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, RM-5712, 6 FCC Rcd 437 (1991).

⁵ See Amendment of the Commission's Rules Concerning Maritime Communications, *Second Report and Order and Second Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 12 FCC Rcd 16949, 16965 ¶ 24 (1997).

⁶ See Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6696 ¶ 24 (2002).

⁷ Maritel, Inc. and Mobex Network Services, LLC, *Report and Order*, WT Docket No. 04-257, 22 FCC Rcd 8971 (2007) (*Flexibility Order*), *aff'd*, 25 FCC Rcd 533 (2010), *aff'd*, 26 FCC Rcd 2491 (2011), *review pending*.

performance and service quality, placing back-up facilities into operation or rerouting power distribution when required, dispatching repair crews, and metering.

4. Transco has acquired AMTS Block B spectrum in Vermont,⁸ and seeks waiver of certain AMTS service rules to allow it to operate a PLMR system in support of its critical infrastructure utility operations. Specifically, Transco asks that we waive Section 80.92(a) of the Commission's Rules, which requires Part 80 licensees to monitor a frequency prior to transmitting;⁹ Section 80.123(a) of the Commission's Rules, which requires AMTS licensees that serve stations on land to provide each associated land station a letter indicating that the land station may operate under the authority of the AMTS station's license;¹⁰ Section 80.123(f), which permits AMTS mobile units to communicate only with public coast stations;¹¹ and Section 80.479(c) of the Commission's Rules, which provides that AMTS frequencies may be used for mobile-to-mobile communications only if written consent is obtained from all affected licensees.¹² For the reasons stated below, we waive Sections 80.92(a) and 80.123(f), but deny the request for waiver of Sections 80.123(a) and 80.479(c).¹³

5. *Discussion.* Section 1.925(b)(3) of the Commission's Rules provides that we may grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (b) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁴

6. With respect to the monitoring requirement in Section 80.92(a), Transco argues that monitoring the frequencies prior to transmitting is incompatible with the operation of a centralized trunked land mobile radio system, and unnecessary because Transco is authorized for an exclusive geographic area license.¹⁵ Because there are no co-channel site-based incumbent licensees that Transco

⁸ See FCC File No. 0003654435 (filed Nov. 24, 2008).

⁹ 47 C.F.R. § 80.92(a).

¹⁰ 47 C.F.R. § 80.123(a).

¹¹ 47 C.F.R. § 80.123(f).

¹² 47 C.F.R. § 80.479(c).

¹³ Transco also requested waiver of other provisions, but we conclude that such waivers are not necessary. Specifically, Transco requests waiver or clarification of Section 80.102(a) of the Commission's Rules, 47 C.F.R. § 80.102(a), which requires Part 80 licensees to transmit station identification. We clarify that this requirement does not apply to Transco, because the Commission has decided to forbear from enforcing the station identification requirement with respect to AMTS licensees. See *Regionet Wireless License, LLC, Order*, 15 FCC Rcd 16119, 16123 ¶ 9 (2000). Next, Transco requests waiver of Section 80.475(c) of the Commission's Rules, 47 C.F.R. § 80.475(c), which provides that AMTS licensees may provide private mobile radio service only to stations whose licensees make cooperative arrangements with the AMTS coast station licensee. We conclude, however, that this requirement is satisfied and no waiver is required, because Transco intends to provide service only to affiliated entities within the same corporate structure.

¹⁴ 47 C.F.R. § 1.925(b)(3); see also *WAIT Radio v FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969). In addition, when the Commission amended its rules to permit AMTS stations to provide private correspondence service to units on land, it stated that the following factors would be considered in evaluating waiver requests: (a) whether the applicant will provide priority to maritime communications, (b) the distance of a proposed land mobile radio operation from the nearest navigable waterways, (c) the magnitude of divergence sought from specific Part 80 technical requirements, (d) whether alternative spectrum that could accommodate the proposed PLMR or other land mobile radio service is unavailable or unsuitable for that purpose, and (e) whether grant of the waiver would benefit public safety or homeland security (including support of critical infrastructure). See *Flexibility Order*, 22 FCC Rcd at 8986-87 ¶ 26.

¹⁵ See Supplement at 1.

must protect, we agree that a waiver of this requirement is warranted under the circumstances presented. We also find that grant of the requested waiver would be in the public interest.¹⁶ Transco's proposed use of the AMTS frequencies does not jeopardize the maritime community's ability to meet its operational, safety and security communications needs, and permitting the use of the subject frequencies for PLMR operations will promote the efficient use of AMTS spectrum and serve the public interest by supporting critical power utility operations. Therefore, we grant Transco's request for waiver of Section 80.92(a).

7. Similarly, with respect to Section 80.123(f), Transco states that allowing mobile units to communicate only with public coast stations is incompatible with its proposed operations, because Transco's mobile units need to communicate with other types of stations, such as affiliated electric utilities' Part 90 stations.¹⁷ We conclude that permitting Transco's mobile units to communicate with stations other than public coast stations will promote the efficient use of AMTS spectrum and serve the public interest by supporting critical power utility operations. Therefore, we grant Transco's request for waiver of Section 80.123(f).

8. With respect to the requirements in Sections 80.123(a) and 80.479(c), however, Transco states only that it "intends to offer interoperable nonprofit radiocommunication service to affiliated electric utilities in Vermont and the requirement[s] of [these sections] [are] unduly burdensome to that effort."¹⁸ We are not persuaded by this recitation, for Transco does not explain how it would be burdened by providing a letter to each land station or obtaining written consent for mobile-to-mobile operations from affected licensees.¹⁹ Therefore, we deny Transco's request for waiver of Sections 80.123(a) and 80.479(c).²⁰

9. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the waiver request filed on July 2, 2009, and supplemented on January 21, 2011, by Vermont Transco LLC in association with application FCC File No. 0003890518 IS GRANTED IN PART and DENIED IN PART as set forth above.

10. IT IS FURTHER ORDERED that application FCC File No. 0003890518 SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules.

¹⁶ In addition, Transco argues that the factors identified by the Commission support its request. *See* Request at 3-5. With respect to priority of marine-originating communications, it notes that marine traffic will still have access to AMTS Block A, VPC, and other Part 80 spectrum. *See also* PacifiCorp, *Order*, 27 FCC Rcd 5796, 5799 ¶ 3 (WTB MD 2009) (*PacifiCorp*) (waiving priority requirement when sufficient other maritime spectrum was available). Transco also states that it will not cause interference to marine communications because its proposed system is mostly within the state of Vermont (which is separated from the Atlantic Ocean by three states), and there was no prior maritime use of the spectrum at issue. Transco does not seek a waiver of the AMTS technical requirements. In addition, it states that congestion on alternative VHF and UHF land mobile spectrum, and the unsuitability of UHF spectrum for the mountainous, rural terrain served by Transco, make AMTS spectrum the most effective spectrum for Transco's needs. Finally, Transco notes that its critical infrastructure operations are an important component of homeland security.

¹⁷ *See* Supplement at 1.

¹⁸ *See id.* at 1, 2.

¹⁹ That the factors identified by the Commission support Transco's request is not a sufficient basis for granting the request, for a waiver request must also satisfy the criteria of Section 1.925. *See Flexibility Order*, 22 FCC Rcd at 8986 ¶ 26.

²⁰ We note that other electric utilities proposing to conduct PLMR operations on Part 80 frequencies have not found it necessary to seek waivers of these requirements. *See PacifiCorp*, 27 FCC Rcd 5796; AMTS Consortium, LLC, *Order*, 20 FCC Rcd 17975 (WTB PSCID 2005), *aff'd*, 22 FCC Rcd 1597 (WTB MD 2007), *aff'd*, 25 FCC Rcd 526 (2010), *recon. pending*.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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